

**Letter of Findings: 04-20200371
Tax Administration
For the Tax Years 2017 and 2018**

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

HOLDING

Business demonstrated that penalty abatement should be granted.

ISSUE

I. Tax Administration - Penalty.

Authority: IC § 6-8.1-10-2.1; [45 IAC 15-11-2](#).

Taxpayer requests that the Department abate penalty.

STATEMENT OF FACTS

Taxpayer is a company doing business in Indiana and outside of Indiana.

In 2019, the Indiana Department of Revenue ("Department") audited Taxpayer's business records for tax years 2017 and 2018. Taxpayer and the Department agreed to use a sample and projection method to perform the audit. Pursuant to the audit, the Department found that Taxpayer purchased tangible personal property subject to sales and use tax, but Taxpayer did not pay sales tax and/or remit use tax on some of the purchases that were not exempt from sales and use tax. The Department thus assessed additional sales and use tax, penalty, and interest.

Taxpayer paid the audit assessment concerning tax and interest, but it requested that the Department abate the penalty. This Letter of Findings ensues and addresses Taxpayer's protest. Additional facts will be provided as necessary.

I. Tax Administration - Penalty.

DISCUSSION

Pursuant to the audit, the Department assessed Taxpayer additional sales and use tax with statutory interest and penalty for 2017 and 2018 tax years. Taxpayer paid the tax and interest but requested that the Department abate the penalty.

A person is subject to a ten percent penalty if the person "fails to pay the full amount of tax shown on the person's return on or before the due date for the return or payment." IC § 6-8.1-10-2.1(a)(2).

IC § 6-8.1-10-2.1(d) states that "[i]f a person subject to the penalty imposed under this section can show that the failure to . . . pay the full amount of tax shown on the person's return, . . . or pay the deficiency determined by the department was due to reasonable cause and not due to willful neglect, the department shall waive the penalty."

[45 IAC 15-11-2](#)(b) further explains:

"Negligence" on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated

as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

The Department shall abate the penalty when a taxpayer "affirmatively establishes that the failure to . . . pay the full amount of tax due . . . or pay a deficiency was due to reasonable cause and not due to negligence." [45 IAC 15-11-2\(c\)](#); see also IC § 6-8.1-10-2.1(d).

Finally, in order to establish reasonable cause, the taxpayer is required to demonstrate that it "exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed" [45 IAC 15-11-2\(c\)](#). The Department is mindful that "[r]easonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case." *Id.* In determining whether the taxpayer has reasonable cause, the Department is required to consider the following factors:

- (1) the nature of the tax involved;
- (2) judicial precedents set by Indiana courts;
- (3) judicial precedents established in jurisdictions outside Indiana;
- (4) published department instructions, information bulletins, letters of findings, rulings, letters of advice, etc.;
- (5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty assessment. *Id.*

Taxpayer, in this instance, generally has a good history of compliance. Taxpayer explained that it was not aware that certain tangible personal property used in its business was subject to sales and use tax. Taxpayer stated that after the audit, it has changed its process to comply with the Indiana law. Therefore, given the totality of the circumstances, the Department is prepared to abate the penalty.

FINDING

Taxpayer's protest is sustained.

October 27, 2020

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